IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6344 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANPSORT CORPORATION

Versus

PG ROHIT

Appearance:

1. Special Civil Application No. 6344 of 1993

MR HS MUNSHAW for Petitioner No. 1

MR KV GADHIA with MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the judgment and award dated 7.10.1992 passed by the Labour Court, Surat in Reference (LCS) No. 572 of 1982 whereby the Labour Court set aside

the dismissal order dated 2.9.1989 and also set aside the order dated 12.10.1988 by which the respondent was initially visited with the penalty of reduction of pay and also directed the petitioner-Corporation to reinstate the respondent in service with full backwages from the date of dismissal till the date of reinstatement.

2. The learned counsel for the petitioner-Corporation has vehemently submitted that the respondent was found to be guilty of collecting fare of Rs.43/- from two adults and two minors, but the respondent had not issued any tickets to them till the checking party arrived and it was only after the respondent saw the checking party that he issued tickets to the said passengers. Initially, the Departmental Authority imposed the penalty of reducing the respondent's pay from Rs.577/- to Rs.496/- i.e. by three stages but the Reviewing Authority considered this to be a fit case for imposing the penalty of dismissal. The Labour Court has found that there was no illegality in the departmental inquiry. The Labour Court has not merely reappreciated the evidence led at the departmental inquiry, but has gone to the extent of observing that the misconduct can be said to have been committed only if the passenger is found without ticket and that the action on the part of the respondent in not issuing tickets even after collecting the fare and in issuing the tickets only upon arrival of the checking party cannot be said to be misconduct. Even though the respondent had 30 defaults to his credit, out of which 16 defaults were pertaining to non-issuance of tickets to the passengers, the Labour Court has shown undue sympathy by observing that in case of past defaults non-issuance of tickets was for about 1 or 2 passengers.

3. On the other hand, the learned counsel for the respondent has opposed the petition and has submitted that the Labour Court has considered all the relevant aspects and that the Labour Court has given a finding of fact that the respondent had not committed any misconduct. Hence, no interference of this Court is warranted under Article 227 of the Constitution.

4. Having heard the learned counsel for the parties, it appears to the Court that when the Disciplinary Authority has found that non-issuance of tickets to the passengers after collecting the fare of Rs.43/- was deliberate and that the conductor had enough time to issue tickets, but the tickets were not issued to those passengers and it was only when the checking party reached the spot that tickets were issued to those

passengers was a finding of fact which ought not to have been lightly interfered with by the Labour Court. There is also considerable substance in the grievance made by the learned counsel for the petitioner-Corporation that the Labour Court ought not to have rightly brushed aside the relevance of past defaults committed by the respondent when there were as many as 16 occasions of which 6 misconducts were confessed by the respondent and a linient view was taken earlier. However, in view of the fact that after reinstatement of the respondent pursuant to the impugned award dated 7.10.1992, no further misconduct is alleged against the respondent as no such case is pleaded before this Court, this Court does not propose to interfere with the direction given by the Labour Court for reinstatement, but the direction given by the Labour Court to pay the respondent full backwages for the intervening period of three years does warrant interference by this Court. In the facts and circumstances of the case, it appears to the Court that interests of justice would be served if the respondent is denied backwages for the entire intervening period i.e. from the date of dismissal till the date of reinstatement and the respondent is also visited with the penalty of stoppage of one increment without future effect.

The award of the Labour is modified to the aforesaid effect. The direction given by the Labour Court to pay the respondent backwages is set aside. The respondent shall not be paid any wages or monetary benefits for the period from the date of dismissal till the date of reinstatement. The order of reinstatement with continuity of service is not disturbed. The respondent shall be subjected to the penalty of stoppage of one increment without future effect.

5. The petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

sundar/-